

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL CASE NO. 1:08cv535

EARL SPENCER BOYCE, JR.,)
)
 Petitioner,)
)
 vs.)
)
UNITED STATES OF AMERICA,)
)
 Respondent.)

)

ORDER

THIS MATTER is before the Court on the Petitioner's Motion [pursuant to] the Freedom of Information Act, 5 U.S.C. §552 [and] Privacy Act of 1974 (Section 552a of title 5) [Doc. 12].

This civil action has been brought pursuant to 28 U.S.C. §2255 to vacate, set aside or correct the Petitioner's conviction and sentence in United States v. Boyce, Criminal Case No. 1:06cr20. In that case, the Petitioner entered into a plea agreement with the Government pursuant to which he agreed to the following provision:

The defendant waives all rights, whether asserted directly or by a representative, to request or to receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without

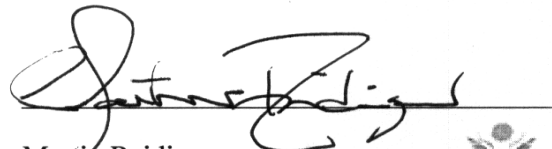
limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. §552, or the Privacy Act of 1974, 5 U.S.C. §552a.

Id., at Doc. 15.

In the pending motion, the Petitioner seeks “access to all evidence that the federal government used against me in my case and in my motion discovery of evidence.” [Doc. 12, at 2-3]. In the §2255 motion, the Petitioner has attacked the sentence imposed and the representation which he received at his sentencing hearing and on direct appeal. The Court therefore finds that the waiver of the plea agreement precludes the pending motion. United States v. Lucas, 141 Fed.Appx. 169 (4th Cir. 2005), *certiorari denied* 546 U.S. 1196, 126 S.Ct. 1391, 164 L.Ed.2d 94 (2006) (affirming district court order denying FOIA request on ground that petitioner had waived his right to do so in plea agreement); Caston v. Executive Office for U.S. Attorneys, 572 F.Supp.2d 125 (D.D.C. 2008) (dismissing FOIA request on ground that plaintiff had waived right in plea agreement).

IT IS, THEREFORE, ORDERED that the Petitioner's Motion [pursuant to] the Freedom of Information Act, 5 U.S.C. §552 [and] Privacy Act of 1974 (Section 552a of title 5) [Doc. 12] is hereby **DENIED**.

Signed: July 5, 2010


Martin Reidinger
United States District Judge

